IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 671 OF 2004

Sau. Alka Arjunrao Kangude ... Appellant

V/s

Smt. Mandakini Sitaram Ovhal ... Respondent

Mr. R.S. Kate for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 4TH JULY, 2005

P.C.:

1. This appeal is preferred by the appellant against the judgment and order passed by the Ad-hoc District Judge, Pune, dated 31.12.2003 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Pune, on 30.10.1999, dismissing the plaintiff's suit for declaration and injunction pertaining to the suit property.

2. I have heard the learned counsel for the appellant. Perused the available record.

3. It is the case of the plaintiff that the property

bearing Otta No.702 of the Dattawadi, Pune, was allotted to deceased Laxman N. Ovhal by the Maharashtra Government under the scheme of floor rehabilitation. Deceased Laxman N. Ovhal and plaintiff alongwith her family members were residing in the suit property. Plaintiff had treated deceased Laxman like her father and deceased Laxman had also treated plaintiff as his daughter. The State Government afterwards declared its decision to give ownership of the suit property to deceased Laxman. Accordingly, in the life time of Laxman Ovhal, plaintiff had paid all the amount of price which was determined by the Government. Hence the suit property came in the name of Laxman Ovhal. Out of love and affection for the plaintiff like his daughter, deceased Laxman had executed gift deed in favour of the plaintiff in respect of the suit property on 12.8.1987 and, therefore, after the death of Laxman, plaintiff has alleged that she became owner of the suit property. The defendant was obstructing the possession of the suit property. Hence the suit came to be filed.

The defendant resisted the plaintiff’s claim vide her written statement and sought dismissal of the suit.

4. The Jt. Civil Judge, Jr.Divn., Pune, after hearing

both parties came to the conclusion that the plaintiff had failed to prove her case and, therefore, the plaintiff was non-suited.

5. The appeal was carried to the District Court, Pune. The Ad-hoc District Judge, after hearing both parties, came to the conclusion that even though the gift deed was proved on record, it was not proved that the plaintiff had become owner and was in possession of the suit property by virtue of the said gift deed and, as such, the appeal came to be dismissed. Hence the present appeal.

6. At the outset, it may be noted that there is no substantial question of law involved in the present appeal. The only issue involved in the dispute was pertaining to the gift deed and consequent ownership in favour of the plaintiff. So far as the gift deed is concerned, it is not seriously argued and so far as the execution of the gift deed is concerned, it has come to be established. However, the moot question round which the dispute revolves is, whether the plaintiff obtained the ownership title by virtue of execution of gift deed by deceased Laxman. In this regard, PW-2 Kulkarni was examined on behalf of the plaintiff, who has settled the

issue. He is the concerned officer from Tahsil office, Pune. His evidence is clear enough to show that the State Government had issued Govt. Resolution on 12.8.1987 to the effect that the tenants would be the owners of the impugned properties if they fulfil certain conditions including making of payment. Accordingly, deceased Laxman was in possession of the suit proeprty and notice was issued to him for making payment, however, he did not make payment and, therefore, Government issued notice to him to that effect and defendant Smt. Mandakini was served with the notice as an occupant. She made the payment in the office and by virtue of the State Government's G.R. she was given "Sanad" of ownership of the suit property and agreement was executed between Tahsildar, Pune and defendant in that regard. The proof of payment made by Smt. Mandakini which is at Exh.43 is on record. This aspect clearly shows that the defendant had made the payment and became owner of the suit property as per the Government resolution and, therefore, despite the gift deed, plaintiff cannot be declared to be the owner of the property.

In the result, it is seen that both the Courts below have rightly appreciated the entire evidence on record

in proper perspective and, therefore, it would brook no interference. Hence the appeal stands dismissed with no order as to costs.

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